



U.S. Department of Justice

United States Marshals Service

Office of General Counsel

Washington, DC 20530-0001

September 13, 2016

Waqas Mirza
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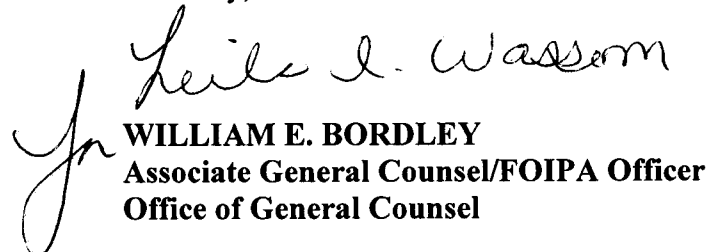
RE: Freedom of Information/Privacy Act Request No. 2016USMS30888
Subject: Guidelines and Policies for Use of Confidential Informants

Dear Waqas Mirza:

The United States Marshals Service (USMS) is responding to your request for a copy of the current guidelines and policies for the use of confidential informants. Twenty-eight pages responsive to your request. After carefully reviewing the pages, we have determined that they are appropriate for release in full. The pages are enclosed with this letter.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that would be subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,


WILLIAM E. BORDLEY
Associate General Counsel/FOIPA Officer
Office of General Counsel

Enclosures



United States Marshals Service POLICY DIRECTIVES

FUGITIVE INVESTIGATIONS

8.14A CONFIDENTIAL INFORMANTS

- A. **Proponent:** Domestic Investigations Branch (DIB), Investigative Operations Division (IOD).
- B. **Purpose:** This policy directive establishes the United States Marshals Service's (USMS) procedures for the use of a Confidential Informant (CI) in furtherance of criminal investigations.
- C. **Authority:** The Director's authority to direct and supervise all activities of the USMS is set forth in 28 U.S.C. § 561(g) and 28 C.F.R. § 0.111. The authority to pay "awards for information or assistance directly relating to violations of the criminal drug laws of the United States" is set forth in 28 U.S.C. § 524(c)(1)(B). The authority for payment of awards of up to \$3,000,000 in accordance with procedures and regulations established or issued by the Attorney General (AG) is set forth in 28 U.S.C. § 530C(b)(1)(L). All rewards exceeding \$250,000 must be approved by the AG.
- D. **Policy:**
1. This policy directive establishes procedures to be used with CI's, as defined below and not to be confused with Confidential Sources (CS's) as defined in Policy Directive 8.14, Confidential Sources, including a suitability determination, registration, instructions, payments, authorization of otherwise illegal activities, review of files, deactivation, and revocation/suspension of authorization.
 2. This policy directive is established in accordance with the AG's Guidelines Regarding the Use of Confidential Informants (AG's Guidelines). The purpose of this policy directive is to set policy regarding the use of CI's in criminal investigations and prosecutions by the USMS and Federal Prosecuting Offices, as defined below.
 3. This policy directive does not apply to the use of Cooperating Defendants/Witnesses, Sources of Information, or Confidential Sources, as defined below.
 4. This policy directive does not supersede otherwise applicable ethical obligations of Department of Justice (DOJ) attorneys, which can, in certain circumstances (for example, with respect to contacts with represented persons) have an impact on law enforcement agents' conduct.
 5. This policy directive applies to the use of a CI in a foreign country only to the extent that the CI is reasonably likely to be called to testify in a domestic case.
 6. This policy directive does not apply to the use of CI's in foreign intelligence or foreign counterintelligence investigations.

E. Responsibilities:

1. Deputy United States Marshal (DUSM):

- a. A DUSM shall complete and sign a written Form USM-340A, *Confidential Informant Registration and Suitability Determination*, for each CI for review and approval by the Supervisory Deputy United States Marshal (SDUSM)/Supervisory Inspector.
- b. During an active investigation, the Controlling DUSM shall check the National Crime Information Center (NCIC) and the USMS Investigative Mission System monthly to see if they contain any information that might materially alter a prior suitability determination including, but not limited to, information pertaining to unauthorized illegal activity by the CI. When any such information is received, that information shall be recorded and maintained in the CI's file pursuant to this policy.
- c. Each CI's file shall be reviewed by the Controlling DUSM at least annually. This review shall be documented by the Controlling DUSM through a completed and signed Form USM-340B, *Confidential Informant Continuing Suitability Report and Recommendation*, which shall be forwarded to a SDUSM/Supervisory Inspector for his or her written approval.
- d. After a SDUSM/Supervisory Inspector has reviewed and approved an individual as suitable to be a CI, the DUSM must register the CI with IOD with the documentation required by this policy.
- e. At least one DUSM, along with one additional DUSM or other law enforcement official present as a witness, shall give the CI the instructions detailed in the *Confidential Informant Agreement* and required by paragraph F.2.b. of this policy directive.
- f. Prior to utilizing an individual as a High Level CI, a Controlling DUSM shall first obtain the written approval of the Confidential Informant Review Committee (CIRC) and provide the committee with any initial or completed Suitability Reports and Recommendations for the individual in question.
- g. Prior to utilizing a CI who is under the obligation of a legal privilege of confidentiality or who is affiliated with the media, a Controlling DUSM shall first obtain the written approval of the CIRC.
- h. Prior to utilizing a CI in the custody of the USMS or the Federal Bureau of Prisons (BOP), the DUSM must receive approval from DOJ's Office of Enforcement Operations (OEO), see USMS Policy Directive 8.15, *Investigative Use of Persons in Custody*.
- i. Prior to utilizing a federal probationer, parolee, or supervised releasee as a CI, the DUSM must receive approval from the SDUSM/Supervisory Inspector.
- j. Prior to utilizing an individual in the Witness Security Program as a CI, the DUSM must receive approval of the Assistant Director (AD) of IOD, the AD of Witness Security Division (WSD), and the OEO.

- k. Prior to utilizing a state or local prisoner, probationer, parolee, or supervised releasee as a CI, the DUSM must receive approval from the SDUSM/Supervisory Inspector.
- l. If a DUSM has communication with a fugitive, as allowed by this policy directive, and approved by the DUSM's Chief Deputy United States Marshal (CDUSM) or Regional Fugitive Task Force (RFTF) Commander, the DUSM must promptly report this communication to all law enforcement agencies having a wanted record for the individual in the NCIC database, and document those communications in the CI's files.
- m. When a payment is made to a CI, the DUSM must ensure that the CI has full knowledge of the guidelines within Form USM-340, *Confidential Informant Agreement*, including that the monies made available to the CI are taxable income and must be reported to the appropriate tax authorities. The DUSM will have the CI complete and sign Form USM-340C, *Receipt for Payment to Confidential Informant*, and will forward this form to his or her supervisor and to IOD within 3 days of making the payment.
- n. After a CI is authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity, at least one DUSM, along with one additional DUSM or other law enforcement official present as a witness, shall review with the CI written instructions in paragraph F.3.c.4 of this policy directive.
- o. After a CI is authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity, the DUSM must take the precautionary measures outlined in paragraph F.3.c.5 of this policy directive to monitor the CI's activity. If the DUSM cannot comply with these precautionary measures the DUSM shall suspend the CI's authorization pursuant to this policy.
- p. If a DUSM has reason to believe that a CI has failed to comply with the specific terms of the authorization of Tier 1 or 2 Otherwise Illegal Activity, the DUSM shall revoke the CI's authorization using the procedures set out in paragraph F.3.c.7 of this policy directive.
- q. In the event that a CI is named in an electronic surveillance affidavit, the DUSM must inform the Federal prosecutor making the application and the Court to which the application is made of the actual status of the CI.
- r. In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by a DUSM, who is utilizing a CI, or working with a CI in connection with a prosecution, the DUSM shall notify the attorney assigned to the matter, in advance whenever possible, if the DUSM has reasonable grounds to believe that the CI will obtain or provide information that is subject to, or arguably subject to, a legal privilege of confidentiality belonging to someone other than the CI.
- s. If the DUSM has reasonable grounds to believe that a CI possesses exculpatory information of a person who is expected to become a target of an investigation, or as to a target of an investigation, or as to a defendant (including a convicted defendant), the DUSM shall notify the Chief Federal Prosecutor.
- t. A DUSM can deactivate a CI for cause or for any other reason pursuant to procedures set out in paragraph F.5. of this policy directive.

2. **Supervisory Deputy United States Marshal (SDUSM) or Supervisory Inspector:**
- a. A SDUSM/Supervisory Inspector must review Form USM-340B, *Confidential Informant Suitability Report and Recommendation*, for the CI and provide written approval on the suitability of the CI.
 - b. During an active investigation, the SDUSM/Supervisory Inspector will instruct all USMS personnel involved in the investigation to promptly report to the Controlling DUSM any information that might materially alter the CI's prior suitability determination including, but not limited to, information pertaining to unauthorized illegal activity by the CI.
 - c. Prior to utilizing a federal probationer, parolee, or supervised releasee as a CI, a SDUSM/Supervisory Inspector shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If it would violate such terms and conditions, the SDUSM/Supervisory Inspector must obtain permission from a federal probation, parole, or supervised release official and document this permission in the CI's file.
 - d. Prior to utilizing a state or local prisoner, probationer, parolee, or supervised releasee as a CI, a SDUSM/Supervisory Inspector shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's incarceration, probation, parole, or supervised release. If the SDUSM/Supervisory Inspector has reason to believe that it would violate such terms and conditions, prior to using the person as a CI, the SDUSM/Supervisory Inspector or his or her designee must obtain the permission of a state or local prison, probation, parole, or supervised release official with the authority to grant such permission, which permission shall be documented in the CI's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate state or local official, the SDUSM/Supervisory Inspector may seek to obtain authorization for the use of such individual as a CI from the state or local court then responsible for the individual's incarceration, probation, parole, or supervised release.
 - e. After the revocation of Tier 1 or Tier 2 Otherwise Illegal Activity by the DUSM, a SDUSM/Supervisory Inspector shall review and, if warranted, approve the written acknowledgment by the CI of revocation.
3. **United States Marshal (USM), CDUSM, or RFTF Commander, Headquarters Personnel:**
- a. A single payment of between \$2,500 and \$25,000 to a CI must be authorized by a CDUSM or a RFTF Commander. A single payment in excess of \$25,000 per case shall be made only with the authorization of a CDUSM or a RFTF Commander and the express approval of the Deputy Assistant Director (DAD), IOD.
 - b. Consistent with paragraph F.3.b.3, payments by the USMS to a CI that exceed an aggregate of \$100,000 for a calendar year shall be made only with the authorization of a CDUSM or RFTF Commander and the express approval of the DAD, IOD. The DAD, IOD, may authorize additional aggregate annual payments in increments of \$50,000 or less.

- c. Consistent with paragraph F.3.b.3-4, and regardless of the timeframe, any payments by the USMS to a CI that exceed an aggregate of \$200,000 shall be made only with the authorization of a CDUSM or RFTF Commander and the express approval of the DAD, IOD. After the DAD, IOD has approved payments to a CI that exceed an aggregate of \$200,000, the DAD, IOD, may authorize, subject to paragraph F.3.b.4, additional aggregate payments in increments of \$100,000 or less.
- d. A USM, CDUSM, or RFTF Commander; the AD, IOD; and the Chief Federal Prosecutor must approve of Tier 1 Otherwise Illegal Activity for a CI and document these findings pursuant to this policy.
- e. A USM, CDUSM, or RFTF Commander and the AD, IOD, must approve of Tier 2 Otherwise Illegal Activity for a CI and document these findings pursuant to this policy.
- f. When a DUSM has reasonable grounds to believe that a current or former CI is being prosecuted by, is the target of an investigation by, or is expected to become a target of an investigation by a Federal Prosecuting Office, a USM, CDUSM, or RFTF Commander must immediately notify the Chief Federal Prosecutor of that individual's status as a current or former CI and follow the procedures in this policy.
- g. When a DUSM has reasonable grounds to believe that a CI has engaged in unauthorized criminal activity, a USM, CDUSM, or RFTF Commander shall immediately notify the Chief Federal Prosecutors as listed in this policy.
- h. When a DUSM has reasonable grounds to believe that: (1) a current or former CI has been called to testify by the prosecution in any federal grand jury or judicial proceeding; (2) the statements of a current or former CI have been, or will be, utilized by the prosecution in any federal judicial proceeding; or (3) a federal prosecutor intends to represent to a Court or jury that a current or former CI is or was a co-conspirator or other criminally culpable participant in any criminal activity, a USM, CDUSM, or RFTF Commander shall immediately notify the Chief Federal Prosecutor for that proceeding of the individual's status as a current or former CI.
- i. A USM, CDUSM, or RFTF Commander and the Chief Federal Prosecutor shall consult to facilitate any review and copying of the CI's files by the Chief Federal Prosecutor.

F. Procedures:

1. General Provisions:

- a. **Prohibition on Commitments of Immunity by Federal Law Enforcement Agencies:** A DUSM does not have any authority to make any promise or commitment that would prevent the government from prosecuting an individual for criminal activity that is not authorized pursuant to guidance below, or that would limit the use of any evidence by the government, without the prior written approval of the Federal Prosecuting Office that has primary jurisdiction to prosecute the CI for such criminal activity. A DUSM must take the utmost care to avoid giving any person the erroneous impression that he or she has any such authority.

- b. **Revealing a CI's True Identity:** Except in the case of approvals and reviews described below in Review of Long-Term CI coordination concerning payments to CI's, notification that the CI has obtained privileged information, and coordination concerning deactivation of CI, but only with respect to a CI whose identity was not previously disclosed, whenever a DUSM is required to make contact of any kind with a Federal Prosecuting Office pursuant to this policy directive regarding a CI, the DUSM may not withhold the true identity of the CI from the Federal Prosecuting Office.
- c. **Duty of Candor:** USMS employees have a duty of candor in the discharge of their responsibilities pursuant to the AG's Guidelines.
- d. **Maintaining Confidentiality:**
 - 1) A DUSM must take the utmost care to avoid conveying any confidential investigative information to a CI (e.g., information relating to electronic surveillance, search warrants, or the identity of other actual or potential informants), other than what is necessary and appropriate for operational reasons.
 - 2) The Chief Federal Prosecutor and his or her designee are required to maintain as confidential the identity of any CI and the information the CI has provided, unless obligated to disclose it by law or Court order. If a DUSM provides the Chief Federal Prosecutor or his or her designee with written material containing such information:
 - a) Such individual is obligated to keep it confidential by placing it into a locked file cabinet when not in his or her direct care and custody;
 - b) Access to the information shall be restricted to the Chief Federal Prosecutor or his or her designee and personnel deemed necessary to carry out the official duties related to the case;
 - c) The Chief Federal Prosecutor or his or her designee is responsible for assuring that each person permitted access to the information is made aware of the need to preserve the security and confidentiality of the information, as provided in this policy;
 - d) Prior to disclosure of the information to defense counsel or in open Court, the Chief Federal Prosecutor or his or her designee must give the USMS an opportunity to discuss such disclosure and must comply with any other applicable provision of 28 C.F.R. §§ 16.21-16.29; and
 - e) At the conclusion of a case or investigation, all written materials containing the information that have not been disclosed shall be forwarded to the DUSM that provided them.

e. **Exceptions and Dispute Resolution:**

- 1) Whenever any of the entities to which the AG's Guidelines applies believes that an exception to any provision of the AG's Guidelines is justified, or whenever there is a dispute between or among any such entities (other than a dispute with the Criminal Division of the DOJ) regarding this policy, an exception must be sought from, or the dispute shall be resolved by, the Assistant Attorney General (AAG) for the Criminal Division or his or her designee. The Deputy Attorney General (DAG) or his or her designee shall hear appeals, if any, from decisions of the AAG.
- 2) Whenever there is a dispute between the Criminal Division and any of the other entities to which the AG's Guidelines applies, such dispute shall be resolved by the DAG or his or her designee.
- 3) Any exception granted or dispute resolved pursuant to this paragraph, which involves the USMS, shall be documented in USMS files.

f. **Rights of Third Parties:** Nothing in this policy directive is intended to create or does create an enforceable legal right or private right of action by a CI or any other person.

2. **Registering a CI:**

a. **Initial Suitability Determination:**

- 1) Prior to utilizing a person as a CI, a DUSM shall complete and sign a written Form USM-340A, Confidential Informant Registration and Suitability Determination, which shall be forwarded to a SDUSM/Supervisory Inspector for his or her review and written approval. In completing the Initial Suitability Report and Recommendation, the DUSM must address the following factors (or indicate that a particular factor is not applicable):
 - a) The person's true identity;
 - b) The person's age;
 - c) The person's alien status;
 - d) Whether the person is a public official, law enforcement officer, union official, employee of a financial institution or school, member of the military services, a representative or affiliate of the media, or a party to, or in a position to be a party to, privileged communications (e.g., a member of the clergy, a physician, or a lawyer);
 - e) The extent to which the person would make use of his or her affiliations with legitimate organizations in order to provide information or assistance to the USMS, and the ability of the

USMS to ensure that the person's information or assistance is limited to criminal matters;

- f) The extent to which the person's information or assistance would be relevant to a present or potential investigation or prosecution and the importance of such investigation or prosecution;
- g) The nature of any relationship between the CI and the subject or target of an existing or potential investigation or prosecution, including but not limited to a current or former spousal relationship or other family tie, and any current or former employment or financial relationship;
- h) The person's motivation in providing information or assistance, including any consideration sought from the government for this assistance;
- i) The risk that the person might adversely affect a present or potential investigation or prosecution;
- j) The extent to which the person's information or assistance can be corroborated;
- k) The person's reliability and truthfulness;
- l) The person's prior record as a witness in any proceeding;
- m) Whether the person has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is under arrest, or has been charged in a pending prosecution;
- n) Whether the person is reasonably believed to pose a danger to the public or other criminal threat, or is reasonably believed to pose a risk of flight;
- o) Whether the person is a substance abuser or has a history of substance abuse;
- p) Whether the person is a relative of an employee of any law enforcement agency;
- q) The risk of physical harm that may occur to the person or his or her immediate family or close associates as a result of providing information or assistance to the USMS; and
- r) The record of the USMS and the record of any other law enforcement agency (if available to the USMS) regarding the person's prior or current service as a CI, Cooperating Defendant/Witness, or Source of Information, including, but not limited to, any information regarding whether the person was at

any time terminated for cause.

b. Registration:

- 1) After a SDUSM/Supervisory Inspector has reviewed and approved an individual as suitable to be a CI, the individual shall be registered with IOD as a CI. In registering a CI, the USMS District office or RFTF office shall, at a minimum, document or include the following in the CI's files:
 - a) A photograph of the CI;
 - b) The case DUSM's efforts to establish the CI's true identity;
 - c) The results of a criminal history check for the CI;
 - d) Form USM-340B, *Confidential Informant Continuing Suitability Report and Recommendation*;
 - e) Form USM-340, *Confidential Informant Agreement*;
 - f) Any promises or benefits, and the terms of such promises or benefits, that are given to a CI by a DUSM or any other law enforcement agency (if available to the DUSM);
 - g) Any promises or benefits, and the terms of such promises or benefits, that are given a CI by any Federal Prosecuting Office or any state or local prosecuting office (if available to the DUSM); and
 - h) All information that is required to be documented in the CI's files pursuant to this policy directive (e.g., the provision of the instructions set forth in the next paragraph).

c. Instructions:

- 1) In registering a CI, at least one DUSM, along with one additional DUSM or other law enforcement official present as a witness, shall review with the CI written instructions contained in the Form USM-340, *Confidential Informant Agreement*, which states that:
 - a) Information provided by the CI to the USMS must be truthful;
 - b) The CI's assistance and the information provided are entirely voluntary;
 - c) The United States Government will strive to protect the CI's identity but cannot guarantee that it will not be divulged;
 - d) If applicable, the USMS on its own cannot promise or agree to any immunity from prosecution or other consideration by a Federal Prosecuting Office or a Court in exchange for the CI's cooperation, since the decision to confer any such benefit lies

within the exclusive discretion of the Federal Prosecuting Office and the Court. However, the USMS will consider (but not necessarily act upon) a request by the CI to advise the appropriate Federal Prosecuting Office or Court of the nature and extent of CI's assistance to the USMS;

- e) If applicable, the CI has not been authorized to engage in any criminal activity and has no immunity from prosecution for any unauthorized, criminal activity;
 - f) The CI must abide by the instructions of the USMS and must not take or seek to take any independent action on behalf of the United States Government;
 - g) The CI is not an employee of the United States Government and may not represent himself or herself as such;
 - h) The CI may not enter into any contract or incur any obligation on behalf of the United States Government, except as specifically instructed and approved by the USMS;
 - i) The USMS cannot guarantee any rewards, payments, or other compensation to the CI;
 - j) In the event that the CI receives any rewards, payments, or other compensation from the USMS, the Federal Government, or a state government, the CI is liable for any taxes that may be owed; and
 - k) If applicable, no promises or commitments can be made, except by Immigration and Customs Enforcement, regarding alien status of any person to enter or remain in the United States.
- 2) The content and meaning of each of the instructional points contained in Form USM-340, *Confidential Informant Agreement*, must be clearly conveyed to the CI. Immediately after these instructions have been given, the DUSM shall require the CI to acknowledge his or her receipt and understanding of the instructions. The DUSM and the other law enforcement official shall document that the instructions were reviewed with the CI and that the CI acknowledged the instructions and his or her understanding of them. As soon as practicable thereafter, a SDUSM/Supervisory Inspector shall review and, if warranted, approve the documentation.
 - 3) The instruction and documentation procedures shall be repeated whenever it appears necessary or prudent to do so, and in any event at least every 12 months.

d. **Continuing Suitability Review.**

- 1) Each CI's file shall be reviewed by the Controlling DUSM at least annually. In documenting this review, the Controlling DUSM shall

complete and sign Form USM-340B, Confidential Informant Continuing Suitability Report and Recommendation, which shall be forwarded to a SDUSM/Supervisory Inspector for his or her review and written approval. In completing Form USM-340B, Confidential Informant Continuing Suitability Report and Recommendation, the case DUSM must address the factors set forth above (or indicate that a particular factor is not applicable) and, in addition, the length of time that the individual has been registered as a CI and the length of time that the individual has been handled by the same DUSM or DUSMs.

- 2) The Controlling DUSM shall check the National Crime Information Center (NCIC) and the USMS Investigative Mission System monthly to see if they contain any information that might materially alter a prior suitability determination including, but not limited to, information pertaining to unauthorized illegal activity by the CI. All USMS personnel involved in the investigation shall be instructed by the SDUSM/Supervisory Inspector to promptly report any such information to the Controlling DUSM. When any such information is received, that information shall be recorded and maintained in the CI's file pursuant to this policy.

e. **Review of Long-Term CI's:**

- 1) When a CI has been registered for more than 6 consecutive years, and, to the extent such a CI remains open, every 6 years thereafter, the CIRC shall review the CI's completed Form USM-340B, Confidential Informant Continuing Suitability Report and Recommendation, and decide whether, and under what conditions, the individual should continue to be utilized as a CI. A Criminal Division representative on the CIRC who disagrees with the decision to approve the continued use of such an individual as a CI may seek review of that decision pursuant to paragraph F.1.e.
- 2) Every 3 years after a CI's file is reviewed pursuant to the provisions above, if the CI remains registered, the USMS shall conduct an internal review, including review by the Chief, Domestic Investigations Branch (DIB), IOD, of the CI's completed Form USM-340B, Confidential Informant Continuing Suitability Report and Recommendation. If the Chief, DIB, decides that there are any apparent or potential problems that may warrant any change in the use of the CI, the Chief shall consult the appropriate CDUSM or RFTF Commander and provide the Form USM-340B, Confidential Informant Continuing Suitability Report and Recommendation, to the CIRC for review in accord with paragraph F.2.e.1.

f. **Special Approval Requirements:**

- 1) **High Level CI:**
 - a) Prior to utilizing an individual as a High Level CI, a Controlling DUSM shall first obtain the written approval of the CIRC. A Criminal Division representative on the CIRC who disagrees with a decision to approve the use of an individual as a High Level CI may seek review of that decision pursuant to this policy.
 - b) In deciding whether to approve the use of a High Level CI, the

CIRC shall have access to any initial or completed Suitability Reports and Recommendations for the individual in question.

- c) After a final decision has been made to approve the use of a High Level CI, the CIRC shall consider whether to notify the Chief Federal Prosecutor of any Federal Prosecuting Office that is participating in the conduct of an investigation that is, or would be, utilizing the High Level CI, or any Federal Prosecuting Office that has been, or would be, working with that individual in connection with a prosecution, of the decision to approve that individual as a High Level CI. If the CIRC determines that no such notification shall be made, the reason or reasons for the determination shall be provided to the Criminal Division. A Criminal Division representative on the CIRC who disagrees with a decision not to provide such notification may seek review of the decision pursuant to paragraph F.1.e. of this policy.

2) **Individuals Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the Media:**

- a) Prior to utilizing an individual as a CI who is under the obligation of a legal privilege of confidentiality or affiliated with the media, a Controlling DUSM shall first obtain the written approval of the CIRC. A Criminal Division representative on the CIRC who disagrees with a decision to approve the use of such an individual as a CI may seek review of that decision.
- b) In deciding whether to approve the use as a CI of an individual who is under the obligation of a legal privilege of confidentiality or affiliated with the media, the CIRC shall have access to any initial or completed Suitability Reports and Recommendations for the individual in question.
- c) After a final decision has been made to approve the use of an individual who is under the obligation of a legal privilege of confidentiality or affiliated with the media as a CI, the CIRC shall consider whether to notify the Chief Federal Prosecutor of any Federal Prosecuting Office that is participating in the conduct of an investigation that is, or would be, utilizing the individual, or any Federal Prosecuting Office that has been, or would be, working with that individual in connection with a prosecution, of the decision to approve that individual as a CI. If the CIRC determines that no such notification shall be made, the reason or reasons for the determination shall be provided to the Criminal Division representatives on the CIRC. A Criminal Division representative on the CIRC who disagrees with a decision not to provide such notification may seek review of that decision pursuant to paragraph F.1.e. of this policy.

3) **Federal Prisoners, Probationers, Parolees, Detainees and Supervised Releases:**

- a) Consistent with existing DOJ requirements, a DUSM must receive the approval of the Criminal Division's OEO prior to

utilizing as a CI an individual who is in the custody of the USMS or BOP, or who is under BOP supervision. (See U.S.A.M. 9-21.050 and Policy Directive 8.15, Investigative Use of Persons in Custody.)

- b) Prior to utilizing a federal probationer, parolee, or supervised releasee as a CI, a SDUSM/Supervisory Inspector shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's probation, parole, or supervised release. If the SDUSM/Supervisory Inspector has reason to believe that it would violate such terms and conditions, prior to using the person as a CI, the SDUSM/Supervisory Inspector or his or her designee must obtain the permission of a federal probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the CI's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate federal official, the DUSM may seek to obtain authorization for the use of such individual as a CI from the Court then responsible for the individual's probation, parole, or supervised release, provided that the SDUSM/Supervisory Inspector first consults with the Federal Prosecuting Office for that district.
- c) In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by the USMS in which a federal probationer, parolee, or supervised releasee would be utilized as a CI, or where a Federal Prosecuting Office would be working with a federal probationer, parolee, or supervised releasee in connection with a prosecution, the SDUSM/Supervisory Inspector shall notify the attorney assigned to the matter prior to using the person as a CI.

4) **Current or Former Participants in the Witness Security (WitSec) Program:**

- a) The use of a WitSec participant as a CI requires prior approval of the AD for IOD, the AD for WSD, the sponsoring prosecutor (or his or her successor) and the DOJ, OEO. All requests to use any current or past WitSec participant as a CI will be directed to the Branch Chief, DIB, IOD, who will coordinate a review with the WSD and OEO. (See U.S.A.M 9-21.800)
- b) In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by the USMS in which the current or former WitSec participant would be used as a CI, or where a Federal Prosecuting Office would be working with a current or former WitSec participant in connection with a prosecution, the USMS shall notify the attorney assigned to the matter prior to using the person as a CI.

5) **State or Local Prisoners, Probationers, Parolees, or Supervised Releases:**

- a) Prior to utilizing a state or local prisoner, probationer, parolee, or supervised releasee as a CI, a SDUSM/Supervisory Inspector shall determine if the use of that person in such a capacity would violate the terms and conditions of the person's incarceration, probation, parole, or supervised release. If the SDUSM/Supervisory Inspector has reason to believe that it would violate such terms and conditions, prior to using the person as a CI, the SDUSM/Supervisory Inspector or his or her designee must obtain the permission of a state or local prison, probation, parole, or supervised release official with authority to grant such permission, which permission shall be documented in the CI's files. If such permission is denied or it is inappropriate for operational reasons to contact the appropriate state or local official, the SDUSM/Supervisory Inspector may seek to obtain authorization for the use of such individual as a CI from the state or local court then responsible for the individual's incarceration, probation, parole, or supervised release.
- b) In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by the USMS in which a state or local prisoner, probationer, parolee, or supervised releasee would be utilized as a CI, or where a Federal Prosecuting Office would be working with a state or local prisoner, probationer, parolee, or supervised releasee in connection with a prosecution, the SDUSM/Supervisory Inspector shall notify the attorney assigned to the matter prior to using the person as a CI.

6) **Fugitives:**

- a) Except as provided below, a DUSM shall have no communication with a current or former CI who is a fugitive, as defined below for this policy directive.
- b) A DUSM is permitted to have communication with a current or former CI who is a fugitive:
 - I. If the communication is part of a legitimate effort by the DUSM to arrest the fugitive; or
 - II. If the communication is approved, in advance whenever possible, by a second-line supervisor or higher of any federal, state, or local law enforcement agency that has a wanted record for the individual in the NCIC database and, in the case of a federal warrant, by the Federal Prosecuting Office for the issuing district.
- c) A DUSM who has communication with a fugitive must promptly report such communication to all federal, state, and local law enforcement agencies and other law enforcement agencies having a wanted record for the individual in the NCIC database, and document those communications in the CI's files.

3. **Responsibilities Regarding Registered CI's:**

a. **General Provisions:**

1) **No Interference with an Investigation of a CI:**

- a) A DUSM must take the utmost care to avoid interfering with or impeding any criminal investigation or arrest of a CI. No DUSM shall reveal to a CI any information relating to an investigation of the CI. A DUSM shall not confirm or deny the existence of any investigation of the CI, unless authorized to do so by the Chief Federal Prosecutor; nor shall a DUSM agree to a request from a CI to determine whether the CI is the subject of any investigation.

2) **Prohibited Transactions and Relationships:**

- a) A DUSM shall not exchange gifts with a CI; provide the CI with anything of more than nominal value; receive anything of more than nominal value from a CI; or engage in any business or financial transactions with a CI. Except as authorized below, any exception to this provision requires the written approval of a SDUSM/Supervisory Inspector, in advance whenever possible, based on a written finding by the SDUSM/Supervisory Inspector that the event or transaction in question is necessary and appropriate for operational reasons. This written finding shall be maintained in the CI's files.
- b) A DUSM or any other USMS personnel shall not socialize with a CI except to the extent necessary and appropriate for operational reasons.
- c) In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by a DUSM that is utilizing a CI, or working with a CI in connection with a prosecution, the SDUSM/Supervisory Inspector shall notify the attorney assigned to the matter, in advance whenever possible, if the SDUSM/Supervisory Inspector approves an exception under F.3.a.2 or if a Federal Law Enforcement Agent socializes with a CI in a manner not permitted under this section.

b. **Monetary Payments:**

- 1) Monies paid by the USMS to a CI in the form of fees and awards will be commensurate with the value, as determined by the USMS, of the information he or she provided or the assistance he or she rendered to the USMS. Reimbursements of expenses, incurred by a CI are based upon actual expenses incurred.
- 2) Under no circumstances shall any payments to a CI be contingent upon the conviction or punishment of any individual.
- 3) All single payments of between \$2,500 and \$25,000 to a CI must be authorized by a CDUSM or a RFTF Commander. A single payment in excess of \$25,000 per case shall be made only with the authorization of

a CDUSM or a RFTF Commander and the express approval of the DAD, IOD.

- 4) Consistent with paragraph F.3.b.3 above, payments by the USMS to a CI that exceed an aggregate of \$100,000 for a calendar year shall be made only with the authorization of a CDUSM or RFTF Commander and the express approval of the DAD, IOD. The DAD, IOD, may authorize additional aggregate annual payments in increments of \$50,000 or less.
- 5) Consistent with paragraph F.3.b.3-4, and regardless of the time frame, any payments by the USMS to a CI that exceed an aggregate of \$200,000 shall be made only with the authorization of a CDUSM or RFTF Commander and the express approval of the DAD, IOD. After the DAD, IOD has approved payments to a CI that exceed an aggregate of \$200,000, the DAD, IOD, may authorize, subject to paragraph F.3.b.4, above, additional aggregate payments in increments of \$100,000 or less.
- 6) The payment of any monies to a CI shall be witnessed by at least two law enforcement representatives. Immediately after receiving a payment, the CI shall be required to sign or initial, and date, a written receipt. The CI may sign or initial the receipt by using a pseudonym that has been previously approved and documented in the CI's files and designated for use by only one CI. At the time of the payment, the representatives shall advise the CI that the monies may be taxable income that must be reported to tax authorities. Thereafter, those representatives shall document the payment and the advice of taxability in the CI files. The documentation of payment shall specify whether the payment is for information, services, or expenses.
- 7) All payments to a CI must be witnessed by at least two Law Enforcement Officers (LEOs), one of whom must be a USMS employee. At the time of payment, the DUSM will have the CI sign Form USM-340C, *Receipt for Payment to Confidential Informant*. The CI may sign or initial the written receipt by using a pseudonym which has been previously approved and documented in the CI file and designated for use by only one CI. Upon completion of payment, the DUSM and the witness will also sign either the original Form USM-340C, *Receipt for Payment to Confidential Informant*, or a copy thereof. An approving official may not sign as a witness. In the event of extraordinary circumstances, the witness requirement may be waived by the AD, IOD. If granted, the waiver will be documented in the CI's file.
- 8) After payment of funds to the CI, the Investigator will complete Form USM-340D, *Voucher for Receipt of Funds and Payment to Confidential Informant*, and will forward the form to his or her supervisor for inclusion in the CI's file. The supervisor must accept only the original voucher with an ink signature. The Investigator will also forward a copy of the signed *Voucher for Receipt of Funds and Payment to Confidential Informant* to IOD for inclusion into the Headquarters CI file within 3 days of making a witness payment to the CI. Form USM-340C, *Receipt for Payment to Confidential Informant*, will be returned to the district or RFTF Administrative Officer for retention in the district's or RFTF's financial files. Under no circumstances will anyone without a bona fide "need-to-know" be given a copy or have access to any information or forms in the CI file. This includes USMS administrative personnel and USMS

investigators without a "need-to-know." Administrative personnel normally only have access to Form USM-340C, *Receipt for Payment to Confidential Informant*.

- 9) **Coordination with Prosecution:** In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by the USMS, or working with a CI in connection with a prosecution, the DUSM shall coordinate with the attorney assigned to the matter, in advance whenever possible, the payment of monies to the CI.

c. **Authorization of Otherwise Illegal Activity:**

1) **General Provisions:**

- a) A DUSM shall not authorize a CI to engage in any activity that otherwise would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization, except as provided in the authorization provisions in outlined below.
- b) The USMS is never permitted to authorize a CI to:
 - I. Participate in an act of violence;
 - II. Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or the fabrication, alteration, or destruction of evidence);
 - III. Participate in an act designed to obtain information for the USMS that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to an illegal search); or
 - IV. Initiate or instigate a plan or strategy to commit a federal, state, or local offense.

2) **Authorization:**

- a) Tier 1 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by:
 - I. A USM, CDUSM, or RFTF Commander;
 - II. The AD, IOD; and
 - III. The appropriate Chief Federal Prosecutor.
- b) Tier 2 Otherwise Illegal Activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by a USM, CDUSM, or RFTF Commander and the AD, IOD.
- c) For purposes of this paragraph, the "appropriate Chief Federal

Prosecutor” is the Chief Federal Prosecutor that: (1) is participating in the conduct of an investigation by the USMS, or is working with that active CI in connection with a prosecution; (2) with respect to Otherwise Illegal Activity that would constitute a violation of federal law, would have primary jurisdiction to prosecute the Otherwise Illegal Activity; or (3) with respect to Otherwise Illegal Activity that would constitute a violation only of state or local law, is located where the otherwise criminal activity is to occur.

3) **Findings:**

- a) If the AD, IOD, approves Tier 1 or 2 Otherwise Illegal Activity, the USM, CDUSM, or RFTF Commander who also authorized Tier 1 or 2 Otherwise Illegal Activity must make a finding, which shall be documented in the CI's files, that states authorization for the CI to engage in the Tier 1 or 2 Otherwise Illegal Activity is:

I. Necessary either to:

- i. Obtain information or evidence essential for the success of an investigation that is not reasonably available without such authorization; or
- ii. Prevent death, serious bodily injury, or significant damage to property.

II. That in either case the benefits to be obtained from the CI's participation in the Tier 1 or 2 Otherwise Illegal Activity outweigh the risks.

- b) In making these findings, the USM, CDUSM, or RFTF Commander and the AD, IOD shall consider, among other things:

- I. The importance of the investigation;
- II. The likelihood that the information or evidence sought will be obtained;
- III. The risk that the CI might misunderstand or exceed the scope of his authorization;
- IV. The extent of the CI's participation in the Otherwise Illegal Activity;
- V. The risk that the USMS will not be able to supervise closely the CI's participation in the Otherwise Illegal Activity;
- VI. The risk of violence, physical injury, property damage,

and financial loss to the CI or others; and

- VII. The risk that the USMS will not be able to ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.

4) **Instructions:**

- a) After a CI is authorized to engage in Tier 1 or 2 Otherwise Illegal Activity, at least one DUSM, along with one additional DUSM or other law enforcement official present as a witness, shall review with the CI written instructions that state, at a minimum, that:
- I. The CI is authorized only to engage in the specific conduct set forth in the written authorization described above and not in any other illegal activity;
 - II. The CI's authorization is limited to the time period specified in the written authorization;
 - III. Under no circumstance may the CI:
 - i. Participate in an act of violence;
 - ii. Participate in an act that constitutes obstruction of justice (e.g., perjury, witness tampering, witness intimidation, entrapment, or the fabrication, alteration, or destruction of evidence);
 - iii. Participate in an act designed to obtain information for the USMS that would be unlawful if conducted by a law enforcement agent (e.g., breaking and entering, illegal wiretapping, illegal opening or tampering with the mail, or trespass amounting to an illegal search); or
 - iv. Initiate or instigate a plan or strategy to commit a federal, state, or local offense;
 - IV. If the CI is asked by any person to participate in any such prohibited conduct, or if he or she learns of plans to engage in such conduct, he or she must immediately report the matter to his or her contact DUSM; and
 - V. Participation in any prohibited conduct could subject the CI to full criminal prosecution.
- b) Immediately after these instructions have been given, the CI shall be required to sign or initial, and date a written acknowledgment of the instructions. The CI may sign or initial the written acknowledgement using a pseudonym which has

been previously approved and documented in the CI's files and designated for use by only one CI. As soon as practicable thereafter, a SDUSM/Supervisory Inspector shall review and, if warranted, approve the written acknowledgment.

- 5) **Precautionary Measures.** Whenever a USM, CDUSM, or RFTF Commander and the AD, IOD have authorized a CI to engage in Tier 1 or 2 Otherwise Illegal Activity, all reasonable steps must be taken to:
 - a) Supervise closely the illegal activities of the CI;
 - b) Minimize the adverse effect of the authorized Otherwise Illegal Activity on innocent individuals; and
 - c) Ensure that the CI does not profit from his or her participation in the authorized Otherwise Illegal Activity.
- 6) **Suspension of Authorization.** Whenever a DUSM cannot, for legitimate reasons unrelated to the CI's conduct (e.g., unavailability of the case DUSM), comply with the precautionary measures described above, the DUSM shall immediately:
 - a) Suspend the CI's authorization to engage in Otherwise Illegal Activity until such time as the precautionary measures can be complied with;
 - b) Inform the CI that his or her authorization to engage in any Otherwise Illegal Activity has been suspended until that time; and
 - c) Document these actions in the CI's files.
- 7) **Revocation of Authorization:**
 - a) If a DUSM has reason to believe that a CI has failed to comply with the specific terms of the authorization of Tier 1 or 2 Otherwise Illegal Activity according to this section, the DUSM shall immediately:
 - I. Revoke the CI's authorization to engage in Otherwise Illegal Activity;
 - II. Inform the CI that he or she is no longer authorized to engage in any Otherwise Illegal Activity;
 - III. Comply with the notification requirements outlined in paragraph F. 4. below; and
 - IV. Make a determination whether the CI should be deactivated and document these actions in the CI's files.
 - b) Immediately after the CI has been informed that he or she is no longer authorized to engage in any Otherwise Illegal Activity, the CI shall be required to sign or initial, and date, a written

acknowledgment that he or she has been informed of this fact. The CI may sign or initial the written acknowledgement by using a pseudonym which has been previously approved for use and documented in the CI's files and designated by only one CI. If the CI refuses to sign or initial the written acknowledgment, the DUSM who informed the CI of the revocation of authorization, shall document that the CI has orally acknowledged being so informed. As soon as practicable after notice to the CI, SDUSM/Supervisory Inspector shall review and, if warranted, approve the written acknowledgment.

8) Renewal and Expansion of Authorization.

- a) A DUSM who seeks to re-authorize any CI to engage in Tier 1 or 2 Otherwise Illegal Activity after the expiration of the authorized time period, or after revocation of authorization, must first comply with the procedures set forth above in paragraphs F.3.c.2-5.
- b) A DUSM who seeks to expand, in any material way, a CI's authorization to engage in Tier 1 or 2 Otherwise Illegal Activity by the USMS, must first comply with the procedures set forth above in paragraphs F.3.c.2-5.

9) Emergency Authorization.

- a) In exceptional circumstances, a USM, CDUSM, or RFTF Commander and the AD, IOD and the appropriate Chief Federal Prosecutor may orally authorize a CI to engage in Tier 1 Otherwise Illegal Activity without complying with the documentation requirements of paragraphs F.3.c.2-4 above when they each determine that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.
- b) In exceptional circumstances, a USM, CDUSM, or RFTF Commander and the AD, IOD, may orally authorize a CI to engage in Tier 2 Otherwise Illegal Activity without complying with the documentation requirements of paragraphs F.3.c.2-4 outlined above when he or she determines that a highly significant and unanticipated investigative opportunity would be lost were the time taken to comply with these requirements. In such an event, the documentation requirements, as well as a written justification for the oral authorization, shall be completed within 48 hours of the oral approval and maintained in the CI's files.

10) Designees.

A USM, CDUSM, or RFTF Commander and the AD, IOD and the appropriate Chief Federal Prosecutor may, with the concurrence of each other, agree to designate particular individuals in their respective offices to carry out the approval functions assigned to them pursuant to

paragraphs F.3.c.2-9.

d. **Listing a CI in an Electronic Surveillance Application:**

- 1) A DUSM shall not name a CI as a named interceptee or a violator in an affidavit in support of an application made pursuant to 18 U.S.C. § 2516 for an electronic surveillance order unless the DUSM believes that: (a) omitting the name of the CI from the affidavit would endanger that person's life or otherwise jeopardize an ongoing investigation; or (b) the CI is a bona fide subject of the investigation based on his or her suspected involvement in unauthorized criminal activity.
- 2) In the event that a CI is named in an electronic surveillance affidavit, the DUSM must inform the Federal prosecutor making the application and the Court to which the application is made of the actual status of the CI.

4. **Special Notification Requirements:**

a. **Notification of Investigation or Prosecution.**

- 1) When a DUSM has reasonable grounds to believe that a current or former CI is being prosecuted by, is the target of an investigation by, or is expected to become a target of an investigation by a Federal Prosecuting Office for engaging in alleged felonious criminal activity, the USM, CDUSM, or RFTF Commander must immediately notify the Chief Federal Prosecutor of that individual's status as a current or former CI.
- 2) Whenever such a notification is provided, the Chief Federal Prosecutor and USM, CDUSM, or RFTF Commander and the AD, IOD, with the concurrence of each other, shall notify any other federal, state or local prosecutor's office or law enforcement agency that is participating in the investigation or prosecution of the CI.

b. **Notification of Illegal Activity.**

- 1) Whenever the USMS has reasonable grounds to believe that a CI who is currently authorized to engage in specific Tier 1 or 2 Otherwise Illegal Activity has engaged in unauthorized criminal activity, or whenever a DUSM knows that a CI who has no current authorization to engage in any Tier 1 or 2 Otherwise Illegal Activity has engaged in any criminal activity, a USM, CDUSM, or RFTF Commander shall immediately notify the following Chief Federal Prosecutors of the CI's criminal activity and his or her status as a CI:
 - a) The Chief Federal Prosecutor whose district is located where the criminal activity primarily occurred, unless a state or local prosecuting office in that district has filed charges against the CI for the criminal activity and there clearly is no basis for federal prosecution in that district by the Chief Federal Prosecutor;
 - b) The Chief Federal Prosecutor, if any, whose district is participating in the conduct of an investigation that is utilizing that active CI, or is working with that active CI in connection with a prosecution; and

- c) The Chief Federal Prosecutor, if any, who authorized the CI to engage in Tier 1 Otherwise Illegal Activity pursuant to the above guidance.
- 2) Whenever such notifications are provided, the Chief Federal Prosecutor(s) of the Federal Prosecuting Office and the USM, CDUSM, or RFTF Commander, with the concurrence of each other, shall notify any state or local prosecutor's office that has jurisdiction over the CI's criminal activity, and that has not already filed charges against the CI for the criminal activity, of the fact that the CI has engaged in such criminal activity. The Chief Federal Prosecutor(s) and the USM, CDUSM, or RFTF Commander are not required, but may with the concurrence of each other, also notify the state and local prosecutor's office of the person's status as a CI.
- c. **Notification Regarding Certain Federal Judicial Proceedings.** Whenever a DUSM has reasonable grounds to believe that: (1) a current or former CI has been called to testify by the prosecution in any federal grand jury or judicial proceeding; (2) the statements of a current or former CI have been, or will be, utilized by the prosecution in any federal judicial proceeding; or (3) a federal prosecutor intends to represent to a Court or jury that a current or former CI is or was a co-conspirator or other criminally culpable participant in any criminal activity, the USM, CDUSM, or RFTF Commander shall immediately notify the Chief Federal Prosecutor for that proceeding of the individual's status as a current or former CI.
- d. **Privileged or Exculpatory Information.**
 - 1) In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by a DUSM who is utilizing a CI or working with a CI in connection with a prosecution, the DUSM shall notify the attorney assigned to the matter, in advance whenever possible, if the DUSM has reasonable grounds to believe that the CI will obtain or provide information that is subject to, or arguably subject to, a legal privilege of confidentiality belonging to someone other than the CI.
 - 2) If the DUSM has reasonable grounds to believe that a current or former CI has information that is exculpatory as to a person who is expected to become a target of an investigation, or as to a target of an investigation, or as to a defendant (including a convicted defendant), the DUSM shall notify the Chief Federal Prosecutor responsible for the investigation or prosecution of such exculpatory information.
- e. **Responding to Requests from Chief Federal Prosecutors Regarding a CI.** If a Chief Federal Prosecutor seeks information from a USM, CDUSM, or RFTF Commander as to whether a particular individual is a current or former CI, and states the specific basis for his or her request, the USM, CDUSM, or RFTF Commander shall provide such information promptly. If the USM, CDUSM, or RFTF Commander has an objection to providing such information based on specific circumstances of the case, he or she shall explain the objection to the Chief Federal Prosecutor making the request and any remaining disagreement as to whether the information should be provided shall be resolved.
- f. **File Reviews.** Whenever a DUSM discloses any information about a CI to a

Federal Prosecuting Office, the USM, CDUSM, or RFTF Commander and the Chief Federal Prosecutor shall consult to facilitate any review and copying of the CI's files by the Chief Federal Prosecutor that might be necessary for the Chief Federal Prosecutor to fulfill his or her office's disclosure obligations.

- g. **Designees.** A USM, CDUSM, or RFTF Commander and the AD, IOD and a Chief Federal Prosecutor may, with the concurrence of each other, agree to designate particular individuals in their respective offices to carry out the functions assigned to them pursuant to paragraphs F.4.a-f.

5. **Deactivation of CI's:**

- a. **General Provisions.** A DUSM who determines that a CI should be deactivated for cause or for any other reason shall immediately:
 - 1) Deactivate the individual;
 - 2) Document the reasons for the decision to deactivate the individual as a CI in the CI's files;
 - 3) If the CI can be located, notify the CI that he or she has been deactivated as a CI and obtain documentation that such notification was provided in the same manner as provided in paragraph F.2.c.2 above; and
 - 4) If the CI was authorized to engage in Tier 1 or Tier 2 Otherwise Illegal Activity revoke that authorization.

- b. **Delayed Notification to a CI.**

A DUSM may delay providing the notification to the CI described in paragraph F.5.a. above during the time such notification might jeopardize an ongoing investigation or prosecution or might cause the flight from prosecution of any person. Whenever a decision is made to delay providing a notification, that decision, and the reasons supporting it, must be documented in the CI's files.

- c. **Contacts with Former CI's Deactivated for Cause.**

Absent exceptional circumstances that are approved by a SDUSM/Supervisory Inspector, in advance whenever possible, a DUSM shall not initiate contacts with, or respond to contacts from, a former CI who has been deactivated for cause. When granted, such approval shall be documented in the CI's files.

- d. **Coordination with Prosecutors.**

In situations where a Federal Prosecuting Office is either participating in the conduct of an investigation by a DUSM who is utilizing a CI, or working with a CI in connection with a prosecution, the DUSM shall coordinate with the attorney assigned to the matter, in advance whenever possible, regarding any of the decisions described above.

- 6. This policy directive, and any changes to this policy directive, must be approved by the Office of the Deputy Attorney General.

G. Definitions:

1. **Federal Prosecuting Office:**
 - a. The United State Attorneys' Offices;
 - b. The Criminal Division, Tax Division, Civil Rights Division, Antitrust Division, and Environmental and Natural Resources Divisions of DOJ; and
 - c. Any other litigating component of DOJ with authority to prosecute federal criminal offenses.
2. **Chief Federal Prosecutor:** The head of the Federal Prosecuting Office.
3. **Confidential Informant (CI):** Any individual who provides:
 - a. Useful and credible information to a DUSM regarding felonious criminal activities; and
 - b. From whom the DUSM expects or intends to obtain additional useful and credible information regarding such activities in the future.
 - c. NOTE: The people who supply information that is used by the USMS are always or nearly always people who fall under the definition of a "Confidential Source" and not a "Confidential Informant." Specifically, a CI is a person who provides useful and credible information about ongoing criminal activities, as opposed to information relating to a fugitive's location or other information that is obtained from a CS. In addition, a CI is a person from whom the USMS expects to obtain credible information regarding such activities in the future as opposed to a CS, whose file is opened and closed at approximately the same time to give the CS compensation for providing information that led to the location and arrest of a fugitive or unregistered sex offender.
4. **Confidential Source (CS):** See Policy Directive 8.14, Confidential Sources, for the definition, policy, and procedures related to Confidential Sources.
5. **Cooperating Defendant/Witness:** Any individual who:
 - a. Meets the definition of a CI;
 - b. Has agreed to testify in a proceeding as a result of having provided information to the USMS; and
 - c. Is either:
 - 1) A defendant or potential witness who has a written agreement with a Federal Prosecuting Office, pursuant to which the individual has an expectation of future judicial or prosecutive consideration or assistance as a result of having provided information to the USMS, or
 - 2) A potential witness who has had a Federal Prosecuting Office concur in all material aspects of his or her use by the USMS.
6. **Source of Information:** Any individual who:

- a. Meets the definition of a CI;
 - b. Provides information to a DUSM solely as a result of legitimate routine access to information or records, such as an employee of the military, a law enforcement agency, or a legitimate business (e.g., phone company, banks, airlines), and not as a result of criminal association with persons of investigative interest to the USMS; and
 - c. Provides such information in a manner consistent with applicable law.
7. **High Level Confidential Informant:** A CI who is part of the senior leadership of an enterprise that has:
- a. (i) a national or international sphere of activities, or (ii) high significance to the USMS's national objectives, even if the enterprise's sphere of activities is local or regional; and
 - b. Engages in, or uses others to commit, any of the conduct described below in subsection 7.
8. **Tier 1 Otherwise Illegal Activity:** Any activity that:
- a. Would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization; and
 - b. That involves:
 - 1) The commission, or the significant risk of the commission, of any act of violence by a person or persons other than the CI;
 - 2) Corrupt conduct, or the significant risk of corrupt conduct, by senior federal, state, or local public officials;
 - 3) Manufacturing, importing, exporting, possession, or trafficking of controlled substances in a quantity equal to or exceeding those quantities specified in United States Sentencing Guidelines § 2D1.1(c)(1);
 - 4) Financial loss, or the significant risk of financial loss, in an amount equal to or exceeding those amounts specified in United States Sentencing Guidelines § 2B1.1(b)(1)(I);
 - 5) A CI providing to any person (other than a DUSM) any item, service, or expertise that is necessary for the commission of a federal, state, or local offense, which the person otherwise would have difficulty obtaining; or
 - 6) A CI providing to any person (other than a DUSM) any quantity of a controlled substance, with little or no expectation of its recovery by the USMS.
9. **Tier 2 Otherwise Illegal Activity:** Any other activity that would constitute a misdemeanor or felony under federal, state, or local law if engaged in by a person acting without authorization.

10. **Fugitive:** An individual:
- a. For whom a federal, state, or local law enforcement agency has placed a wanted record in the NCIC database (other than for a traffic or petty offense);
 - b. Who is located either within the United States or in a country with which the United States has an extradition treaty; and
 - c. Whom the law enforcement agency that has placed the wanted record in the NCIC database is willing to take into custody upon his or her arrest and, if necessary, seek his or her extradition to its jurisdiction.
11. **Confidential Informant Review Committee (CIRC):** Committee, that will be implemented if necessary, by the AD, IOD, for purposes of reviewing certain decisions relating to the registration and utilization of CIs, the chair of which is the DAD, IOD, and the membership of which will include the following two representatives designated by the AAG for the Criminal Division of DOJ (each of whom shall be considered a "Criminal Division representative"): a Deputy AAG for the Criminal Division and an Assistant United States Attorney.
12. **Deputy United States Marshal (DUSM):** As used in this policy directive, includes Inspectors and any other USMS employee in an 1811 position who may be in a position to take a specific action required or indicated by this policy directive.
13. **Controlling DUSM:** The DUSM with primary responsibility for the handling of a CI.
14. **Supervisory Deputy United States Marshal (SDUSM):** As used in this policy directive, includes Supervisory Inspectors.

H. **References:** None.

I. **Cancellation Clause:** This is a new policy and remains in effect until superseded or cancelled.

J. **Authorization and Date of Approval:**

By Order of:

Effective Date:

/s/
David L. Harlow
Deputy Director
U.S. Marshals Service

8/9/2016

SUITABILITY FACTORS

Prior to utilizing an individual as a Confidential Informant, the following factors must be addressed:

- a) the person's age;
- b) the person's alien status;
- c) whether the person is a public official, law enforcement officer, union official, employee of a financial institution or school, member of the military services, a representative or affiliate of the media, or a party to, or in a position to be a party to, privileged communications (e.g., a member of the clergy, a physician, or a lawyer);
- d) the extent to which the person would make use of his or her affiliations with legitimate organizations in order to provide information or assistance to the USMS, and the ability of the USMS to ensure that the person's information or assistance is limited to criminal matters;
- e) the extent to which the person's information or assistance would be relevant to a present or potential investigation or prosecution and the importance of such investigation or prosecution;
- f) the nature of any relationship between the CI and the subject or target of an existing or potential investigation or prosecution, including but not limited to a current or former spousal relationship or other family tie, and any current or former employment or financial relationship;
- g) the person's motivation in providing information or assistance, including any consideration sought from the government for this assistance;
- h) the risk that the person might adversely affect a present or potential investigation or prosecution;
- i) the extent to which the person's information or assistance can be corroborated;
- j) the person's reliability and truthfulness;
- k) the person's prior record as a witness in any proceeding;
- l) whether the person has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is under arrest, or has been charged in a pending prosecution;
- m) whether the person is reasonably believed to pose a danger to the public or other criminal threat, or is reasonably believed to pose a risk of flight;
- n) whether the person is a substance abuser or has a history of substance abuse;
- o) whether the person is a relative of an employee of any law enforcement agency;
- p) the risk of physical harm that may occur to the person or his or her immediate family or close associates as a result of providing information or assistance to the USMS; and
- q) the record of the USMS and the record of any other law enforcement agency (if available to the USMS) regarding the person's prior or current service as a CI, Cooperating Defendant/Witness, or Source of Information, including, but not limited to, any information regarding whether the person was at any time terminated for cause.